REMARKS

The present Amendment is in response to the Examiner's Office Action mailed October 16, 2006. Claims 8, 9, and 16 are amended. Claims 1-22 are now pending in view of the above amendments. The Examiner's indication of allowable subject matter in claims 16 and 22 is appreciated.

Reconsideration of the application is respectfully requested in view of the following remarks. For the convenience and reference of the Examiner, the remarks of the Applicants are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicants note that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Obviousness Type Double Patenting Rejection

In the Office Action, the Examiner has provisionally rejected claims 1, 3, 10, 13, 17, 18, 20, 21, and 22 in view of Application Serial No. 10/661,705, and has provisionally rejected claims 1 and 3 in view of Application Serial No. 10/661,907 under the judicially created doctrine of obviousness-type double patenting. While Applicants disagree that the claims of the present

application are obvious in view of either of the aforementioned applications, Applicants have nonetheless submitted herewith a terminal disclaimer relative to Application Serial Nos. 10/661,705 and 10/661,907 in order to overcome these rejections. Withdrawal of these rejections is respectfully requested in view of the terminal disclaimer.

III. Claim Rejections Under 35 U.S.C. § 102

Applicants respectfully note that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. Manual of Patent Examining Procedure § 2131.

The Examiner has rejected claims 1-15 and 17-21 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,850,388 to Anderson et al. (*"Anderson"*). Applicants respectfully disagree.

a. claims 1-9

Claim 1 recites a method comprising, among other things: "...building user layer protocols using a second processing of the data trace and the determined device topology..." The Examiner has alleged that *Anderson* discloses the aforementioned limitation at column 10, lines 50-53. Notwithstanding the allegation of the Examiner, the cited passage of *Anderson* does not appear to provide adequate support for the rejection.

In particular, *Anderson* refers only to "[calculating] station-level statistics for each station operating on the network ... [and storing those statistics] in an array called the 'station list array' ..." *Col. 10, lines 50-53. Emphasis added.* Contrary to the assertion of the Examiner, it is not at all apparent that the cited passage discloses both first and second processing of a data trace, such as is recited in claim 1. Moreover, the cited passage does not, contrary to the assertion of the Examiner, appear to make any reference whatsoever to "building user layer protocols" as claim 1 requires, much less the building of such user layer protocols in connection with "... a second processing of the data trace and the determined device topology" (emphasis added).

Correspondingly, the passage cited by the Examiner as purportedly disclosing the claim 1 limitation "...determining errors in the network device topology using protocol experts in conjunction with the determined device topology..." does not appear to support the contentions of the Examiner. Particularly, while the cited passage of *Anderson* refers to an

"…error_statistics array variable … whose length depends upon the number of errors detected for the particular *network* topology." (col. 12, lines 8-12) (emphasis added), that passage makes no reference to a "network *device* topology" as required by claim 1, much less any reference to the "…[determination of] errors" through the use of "…protocol experts applied to the user layer protocols in conjunction with the determined device topology" (emphasis added) as claim 1 requires.

With respect to the foregoing, Applicant respectfully notes that "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." *37 CFR 1.104. Emphasis added.* Moreover, "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity." *MPEP § 706.* Applicant respectfully submits that in the present case however, the Examiner has failed to identify specific elements of *Anderson* that are purported to correspond to the elements of the rejected claim, and the Examiner has instead simply recited, largely verbatim, the language of the claims and then made only a general reference to passages of the cited reference.

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Anderson* anticipates claim 1, at least because the Examiner has not established that each and every element as set forth in claim 1 is found in *Anderson*, because the Examiner has not established that the identical invention is shown in as complete detail in *Anderson* as is contained in claim 1, and because the Examiner has not shown that *Anderson* discloses the elements arranged as required by claim 1. Applicant thus respectfully submits that the rejection of claim 1, as well as the rejection of corresponding dependent claims 2-9, should be withdrawn.

b.   claims 10-16

Similar to claim 1, claim 10 requires "…processing the combination of the plurality of data traces in conjunction with the determined topology to rebuild user layer protocols…" Again, the Examiner has relied on col. 10, lines 50-53 of *Anderson* as a basis for the rejection. That passage reads "…[calculating] station-level statistics for each station operating on the network … [and storing those statistics] in an array called the 'station list array' . . ." *Col. 10, lines 50-*

53. Emphasis added. Notwithstanding the assertion of the Examiner, it seems clear that the cited passage of *Anderson* recites nothing more than the calculation and storage of statistics, and does not appear to make any reference whatsoever to "rebuild[ing] user layer protocols," much less to a user layer protocol rebuilding process that is implemented by "…processing the combination of the plurality of data traces in conjunction with the determined [network] topology…"

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Anderson* anticipates claim 10, at least because the Examiner has not established that <u>each and every element as set forth in claim 10</u> is found in *Anderson*, because the Examiner has not established that the <u>identical</u> invention is shown <u>in as complete detail</u> in *Anderson* as is contained in claim 10, and because the Examiner has not shown that *Anderson* discloses the elements <u>arranged as required by claim 10</u>. Applicant thus respectfully submits that the rejection of claim 10, as well as the rejection of corresponding dependent claims 11-16, should be withdrawn.

c.   claims 17-22

Claim 17 requires "…analyzing the bidirectional data to extrapolate information indicative of network topology; analyzing individual data samples from the data trace using the network topology to rebuild user layer protocols for the individual data samples…" As in the cases of claims 1 and 10, the Examiner has again used col. 10, lines 50-53 as the basis for the claim rejection. In particular, the Examiner has alleged that the aforementioned limitation is disclosed in *Anderson* at col. 10, lines 50-53. As noted above, that passage reads "…[<u>calculating</u>] station-level statistics for each station operating on the network … [and <u>storing</u> those statistics] in an array called the 'station list array' . . ." *Col. 10, lines 50-53. Emphasis added.* Notwithstanding the assertion of the Examiner, it seems clear that the cited passage of *Anderson* recites nothing more than the <u>calculation and storage of statistics</u>, and does not appear to make any reference whatsoever to <u>any</u> sort of analysis process, much less to "analyzing bidirectional data to extrapolate information indicative of network toplogy" as claim 17 requires.

Likewise, it is not at all apparent that the cited passage of *Anderson* makes any reference to "analyzing individual data samples from the data trace using the network topology to rebuild user layer protocols for the individual samples…" as claim 17 also requires. Rather, and as

noted above, the cited passage recites nothing more than the calculation and storage of statistics, and makes no reference to any sort of data analysis or user layer protocol rebuilding process.

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Anderson* anticipates claim 17, at least because the Examiner has not established that <u>each and every element as set forth in claim 17</u> is found in *Anderson*, because the Examiner has not established that the <u>identical</u> invention is shown <u>in as complete detail</u> in *Anderson* as is contained in claim 17, and because the Examiner has not shown that *Anderson* discloses the elements <u>arranged as required by claim 17</u>. Applicant thus respectfully submits that the rejection of claim 17, as well as the rejection of corresponding dependent claims 18-22, should be withdrawn.

CONCLUSION

In view of the discussion and amendments submitted herein, Applicants respectfully submit that each of the pending claims 1-22 is now in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 16th day of February 2007.

Respectfully submitted,

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